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EX PARTE OR LATE FILED

FILED/ACCEPTED
APR 23 2013
Federal Communications Commission
Office of the Secretary

REDACTED – FOR PUBLIC INSPECTION

SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, GN DOCKET NO. 09-51, CC DOCKET NOS. 01-92, 96-45, WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

April 23, 2013

VIA HAND DELIVERY AND ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

Re: **American Cable Association ("ACA") Ex Parte Filing on CAF Phase I Incremental Support Program, WC Docket No. 10-90**

Dear Ms. Dortch:

The American Cable Association ("ACA"), through its attorneys, hereby submits two copies of the enclosed *Ex Parte* filing redacted pursuant to the Third Protective Order (DA 12-1418) in this proceeding to the Secretary's Office.

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In addition, this submission is being filed electronically in ECFS in the above-referenced docket.

Sincerely,

Thomas Cohen

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Via Hand Delivery and ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association ("ACA") *Ex Parte* Filing on the CAF Phase I Incremental Support Program, WC Docket No. 10-90

Dear Ms. Dortch:

ACA has met a number of times with Commission staff as it considers amending the Connect America Fund (CAF) Phase I Incremental Support Program should the Commission decide to fund the program in 2013. As described in the *Connect America Fund Order*, the program was established to provide "an immediate boost to broadband deployment in areas that are unserved by any broadband provider."[1] In seeking to achieve this objective, the Commission should ensure that support is distributed efficiently, that is – a price cap local exchange carrier (LEC) should only receive support that is necessary to incent it to deploy new facilities to provide 4/1 Mbps (4/1) broadband service. An inefficient distribution of support would give price cap LECs funding that could be used in areas where competitive providers have spent their own capital to build broadband networks.

1 *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 132 (2011) (*Connect America Fund Order*), pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

For these reasons, ACA has expressed concerns about expanding the eligible areas to those unserved by 4/1 broadband (3 Mbps/768 kbps on the National Broadband Map). ACA's analysis shows that expanding the number of eligible locations would lower the average cost deployment per location necessary to meet the minimum requirements of the program.[2] Accordingly, were the Commission to expand the eligible areas to those unserved by 4/1 broadband and maintain the support level at $775 – or worse yet, increase the amount – it would provide price cap LECs with excessive support, that is, more support than is required to provide an economic incentive to deploy broadband in these areas as originally envisioned by the program.

At the same time, ACA has sought to address the fact that the number of areas unserved by 768/200 kbps (768/200) broadband that were expected to receive service under this program may be limited for each price cap LEC and that, where limited, it would further the Commission's objective to permit the LEC to use support to deploy broadband to unserved areas that lack 4/1 broadband. Based on these objectives and factors, ACA has proposed that those price cap LECs that have an insufficient number of eligible lower cost locations based on the 2013 allocation with broadband service speeds of below 768/200 should be able to use Phase I incremental support to deploy broadband to locations in areas that do not currently receive 4/1 broadband service but only after the LEC uses its support to deploy broadband to its remaining lower cost unserved locations with at most 768/200 service.

ACA recognizes that this proposal may not account for the difficulty in deploying to certain lower cost unserved 768/200 census blocks. After all, some of these areas may be isolated. In addition, ACA acknowledges that the efficiency of any deployment may be improved by clustering eligible areas – both unserved by 768/200 and 4/1 broadband – to upgrade entire network routes. Windstream makes this point in its recent *ex parte*.[3] What is required is an alternative approach that addresses this reality while seeking to ensure support is distributed efficiently.

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2 Analysis based on the average population density of eligible locations with speeds below 768/200 and speeds between 768/200 and 4/1 using data from the June 2012 National Broadband Map and the 2010 US Census.

3 *See Ex Parte* from Malena Barzilai, Senior Counsel, Windstream, WC Docket Nos. 10-90 and 05-337 at 2-3 (Apr. 17, 2013). ("When considering whether to undertake a given deployment project, Windstream or any other broadband provider analyzes the total economics of the project. If support is available only for a limited portion of unserved locations on a route…it would in most cases render the entire deployment economically infeasible for Windstream's high-cost, rural service areas.")

To that end, ACA submits that the April 9, 2013 *ex parte* from Frontier Communications (Frontier), which describes the average per location cost of its deployments[4] using the support it accepted in 2012, provides a path forward.[5] Of the major price cap LECs, Frontier was the only one to accept the full allocation of incremental support in 2012. By using Frontier's data on the average per location cost to deploy broadband to eligible unserved areas – and its own contribution to covering that cost[6] – the Commission can develop a benchmark to award incremental support for all price cap LECs in 2013.[7] That is, should the Commission expand eligible areas to those lacking 4/1 broadband, data from Frontier's use of 2012 incremental support can be used to determine – and establish as a benchmark – (1) the average per location cost areas where support would be provided, and (2) the

4 The total per location cost for Frontier is the amount spent to upgrade locations in the "below" 768/200 areas to 4/1 broadband and includes both the $775 in incremental support and additional capital provided by that price cap LEC.

5 *See Ex Parte* from Michael D. Saperstein, Jr., Frontier Communications, WC Docket Nos. 10-90 and 05-337 (Apr. 9, 2013) (*Frontier Ex Parte*). In the *ex parte*, Frontier Communications states that it was able to use support of $775/location to build to approximately **REDACTED** XXXXXXXXXXXXXXXXXXXXXX **REDACTED** of its 768/200 unserved locations for which it received support for a cost of approximately **REDACTED** XXXXXXX **REDACTED**. For the remaining locations, the average cost was approximately **REDACTED** XXXXXXXXXXXX **REDACTED**, but Frontier notes that for these **REDACTED** XXXXXXXXX **REDACTED** locations the "cost curve escalated sharply." Frontier then adds that it has no eligible (768/200) locations to which it could build for a cost of less than **REDACTED** XXXXXXXXX **REDACTED**.

6 In the *Connect America Fund Order*, the Commission stated in finding that support of $775/location was reasonable that it expected "that carriers will supplement incremental support with their own investment." *Connect America Fund Order*, ¶ 144.

7 ACA recognizes that costs of deployments differ for each price cap LEC. However, the incremental support program provides the same amount of support per location regardless of carrier costs. ("For this interim program, we are not attempting to identify the precise cost of deploying broadband to any particular location." *Connect America Fund Order*, ¶ 139.) In addition, three price cap LECs recently offered to match support without differentiating based on their individual costs. *See Ex Parte* from Glen F. Post, III, CEO and President, CenturyLink, Inc., Maggie Wilderotter, Chairman and CEO, Frontier Communications, and Jeff Gardner, President and CEO, Windstream, WC Docket Nos. 10-90 and 05-337 (Apr. 19, 2013) (CenturyLink et al *Ex Parte*).

average per location amount the price cap LEC would be required to supplement with their own investment to be eligible for support.[8]

ACA thus proposes that a price cap LEC accepting incremental support of $775/location be able deploy broadband to any location in a census block designated as unserved by 3 Mbps/768 kbps broadband on the National Broadband Map so long as for all the locations where the LEC builds the average per location cost is at least the average per location cost for Frontier's build in 2012.[9] Under ACA's approach, the private investment (capital match) by price cap LECs will be made to the same locations where they are upgrading service using support of $775 per location. This will further ensure support is used where it is most needed and that the price cap carriers cannot cherry-pick locations where the cost to build is below the $775 per location threshold, which would result in excessive support, and not require any private investment.

The Commission can administer this requirement by having the price cap LEC at the time it accepts funding provide via certification the locations it intends to serve and the estimated average cost for serving these locations.[10] Then at the end of the three year deployment, a price cap LEC can submit and publicly disclose its total costs to the Commission for the areas built, demonstrating that

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8 ACA notes that its approach would ensure that support is spent more efficiently than the approach offered by CenturyLink, Frontier, and Windstream on April 19, 2013. In their *ex parte*, each of these three price cap LECs committed "that it will match the CAF Phase I Incremental Support it accepts in 2013 with an equal investment of its own capital to extend broadband to unserved locations." CenturyLink et al *Ex Parte*. While ACA is heartened by this commitment, the proposal by price cap LECs lacks specificity that would ensure that funds would be distributed in a cost effective and efficient manner. For example, the price cap LECs may not "spend" all of its match to reach unserved locations and use the excess for second-mile fiber. ACA's proposal supplies the necessary discipline to ensure the support is provided most efficiently.

9 The weighted average cost for Frontier for 2012 according to the data it supplied was **REDACTED** XXXXXXXXXXXXXX **REDACTED**. *See Frontier Ex Parte*.

To illustrate the point, the following is a simple example where a price cap LEC accepts funding to deploy broadband to two locations. If the average per location cost to build is set at $775+$X, and a price cap LEC wanted to build to a location whose cost is $100 less than $775 +$X, then the LEC would need to build a location whose cost is at least $100 more than $775+$X so that the average cost of the build for all areas is at least $775 +$X.

10 The Commission can ensure costs provided by each price cap LEC are reasonable by benchmarking the costs of each price cap LEC against the others.

these locations have the requisite 4/1 broadband service and the actual cost for all the locations upgraded are above the average per location threshold.

In sum, ACA believes this is a reasonable approach to implement ACA's proposal. Please let us know if you have any questions. We stand ready to discuss it further.

Sincerely,

Thomas Cohen

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